

# Notice of Allowability

Application No.

10/015,778

Examiner

Victor X. Nguyen

Applicant(s)

SJOSTROM, DOUGLAS D.

Art Unit

3734

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Pre-Appeal Brief submitted on 6/20/2007.
2. ☒ The allowed claim(s) is/are 25-59,64,65 and 70-77.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms. Phyllis K. Kristal on 9/5/2007.

The application has been amended as follows:

**Claims 18-24,60-63,66-69 and 78-81 were canceled.**

**Claims 70 and 74, lines 1-2, "the tough fibrous tissue comprises cartilage" was replaced by – *the edge of helical knife configured to slice into cartilage* - -**

**Claims 71 and 75, lines 1-2, "the cartilage comprises meniscal cartilage" was replaced by – *the edge of helical knife configured to slice into meniscal cartilage* - -**

**Claims 72 and 76, lines 1-2, "the tough fibrous tissue comprises fibroid tissue" was replaced by – *the edge of helical knife configured to slice into fibroid tissue*- -**

**Claims 73 and 77, lines 1-2, "the fibroid tissue comprises an intrauterine fibroid" was replaced by – *the edge of helical knife configured to slice into an intrauterine fibroid*- -**

***EXAMINER'S COMMENT***

2. The Notice of Allowance is responsive to applicant's Pre-Appeal Brief Conference filed 6/20/2007. The amendment and arguments, **see pages 1-5**, filed therein has overcome the rejection of claims 25,42,59 and 64-65 **under 35 USC 102 (b) and (e)**. Therefore, the rejection of claims have been withdrawn.

3. The following is a statement of reasons for the indication of allowable subject matter:

The claims 25,59 and 65 in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose or suggest a cutting instrument comprising: an outer member has an opening bounded by a sharp cutting edge, a helical knife coupled to the outer member for rotation relative to the outer member, where the helical knife has an edge configured to slice into tough, fibrous tissue, where the helical knife edge is arranged relative to the cutting edge such that the edges align in a plane substantially perpendicular to a longitudinal axis of the instrument to create a shearing action therebetween. As to claim 42, the prior art does not teach the invention including: an outer member has an opening bounded by a cutting edge, an inner member received in the outer member for rotation, where the inner member includes a shaft having a helical knife defining a sharp, slicing edge, the slicing edge has a V-shaped cross section perpendicular to a longitudinal extend of the slicing edge. As to claim 64, the prior art does not teach the invention including: an outer member has an opening bounded by a sharp cutting edge, where an inner member received within the outer member, the helical knife located at a distal portion of the inner

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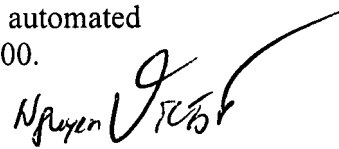
member, where the inner member defines an aspiration opening therein the aspiration opening being located at a proximal portion of the helical knife.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN  
9/7/2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER